

Appellant-Defendant Anthony Cole challenges his conviction following a bench trial for Class C felony Welfare Fraud.¹ Cole contends that the trial court erred in admitting and relying on inadmissible hearsay and that the remaining evidence was insufficient to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

In 1999, Cole's mother, Terri, applied for Section 8 housing assistance. In 2000, the Indianapolis Housing Authority ("IHA") began assisting Terri with the rent owed on her house located at 2705 N. Parker Avenue in Indianapolis, which she shared with Cole.² Terri was informed that as a condition of receiving Section 8 assistance, her entire household must abide by certain rules, including that she must declare all persons residing at the residence, no resident may engage in any drug-related criminal activity, and the IHA must be updated as to any status changes in household composition and income within two weeks of any change. Terri was also notified that all recipients and members of the household must follow the Department of Housing and Urban Development ("HUD") "One Strike, You're Out" rule, under which one may not engage in criminal activities.

On October 13, 2003, Cole notified the IHA that as of October 4, 2003, he no longer resided at 2705 N. Parker Avenue. However, at some point, Indianapolis Housing Police welfare fraud investigator Detective Marytza Toy received a tip that Cole

¹ Ind. Code § 35-43-5-7 (2006).

² At various times since receiving Section 8 assistance in 2000, Terri represented to the IHA that other individuals resided at 2705 N. Parker. Most of these individuals appear to be either minor family members or foster children entrusted to Terri's care.

continued to reside in the home despite his notice to the IHA that he had moved out of the residence. Detective Toy discovered that Cole had been arrested numerous times before and after October 4, 2003, including arrests and convictions for drug possession, carrying a handgun without a license, and criminal trespass.

On July 7, 2006, the State charged Cole with one count of Class C felony welfare fraud and one count of Class D felony theft. On April 26, 2007, the trial court, after conducting a bench trial, found him guilty as charged. On June 29, 2007, the trial court merged Cole's theft conviction into his welfare fraud conviction and sentenced him to four years imprisonment, with two years executed in the Department of Correction, and ordered restitution in the amount of \$4232.00. This appeal follows.

DISCUSSION AND DECISION

A. Admissibility of Evidence

On appeal, Cole contends that the trial court erred by admitting Exhibit 2, at least in part, into the record at trial. Specifically, Cole claims that Exhibit 2, a large exhibit containing many subparts, contained numerous police reports and because police reports are inadmissible hearsay, the trial court erred in admitting the reports into evidence at trial.

It is a well-settled rule of appellate practice that error may not be predicated on the admission of evidence unless there was a timely and specific objection in the trial court. *Cooper v. State*, 171 Ind. App. 350, 355, 357 N.E.2d 260, 263 (1976). Generally, a party must object to the evidence at the time it is offered into the record, and a party that fails to make a timely objection waives the right to have the evidence excluded at trial and the

right on appeal to assert the admission of the evidence was erroneous. *Everage v. N. Ind. Pub. Serv. Co.*, 825 N.E.2d 941, 948 (Ind. Ct. App. 2005). Likewise, a failure to object at trial on the grounds argued on appeal constitutes a waiver and preserves no issue for this court to determine. *Cooper*, 171 Ind. App. at 355, 357 N.E.2d at 263. Furthermore, because appellants may not vary the bases of their objection at the appellate level from that asserted at trial, *State v. Covell*, 580 N.E.2d 704, 707 (Ind. Ct. App. 1991), when a party makes a specific objection to the admissibility of evidence at trial, any other possible objections are waived. *Ruby v. State*, 549 N.E.2d 379, 381 (Ind. Ct. App. 1990).

Here, before admitting Exhibit 2 into evidence, the trial court granted each of the parties time to review the exhibit to determine if an objection pertaining to the admissibility of Exhibit 2 in whole or in part was necessary. The trial court then admitted Exhibit 2 into evidence without any objection by Cole. Cole's failure to object to the admissibility of any subparts contained in Exhibit 2 at the time Exhibit 2 was offered into the record constitutes a failure to enter a timely objection and, as such, acts as a waiver of not only his right to have the evidence excluded at trial, but also a waiver of his right to assert on appeal that the admission of the evidence was erroneous on any grounds. *See Everage*, 825 N.E.2d 948.

Even though Cole failed to timely object to the admission of Exhibit 2, he later objected to Detective Toy's testimony regarding Exhibit 2, stating:

Judge I'm going to object to that testimony, that it's hearsay and that the documents may have reflected that someone indicated that he lived at that address on Parker Avenue, but there's no indication that Mr. Cole stated or actually filled out any forms stating as such, so that would be hearsay.

Tr. p. 72. The trial court then questioned Detective Toy about the procedure used to create the various documents contained in Exhibit 2 before initiating the following exchange pertaining to Cole's objection:

[The Court]:	I'll sustain the objection. Please continue Mr. Tharpe. Let me make it clear. Exhibit 2 is in the record.
[State's Counsel]:	Right.
[The Court]:	We're simply talking about whether or not this witness can tell us what a document means as opposed to what my experience tells me it means, so I'm, I'm excluding her conclusion about the significance of those particular subparts of Exhibit 2.
[State's Counsel]:	Okay.
[The Court]:	Which I think is what you intended to object to, right?
[Cole's Counsel]:	Correct Judge.

Tr. p. 73. This exchange clarifies that Cole's objection, as sustained by the trial court, pertained to Detective Toy's testimony regarding the significance of individual subparts of Exhibit 2, and not to the admissibility of any specific documents contained in Exhibit 2. Furthermore, to the extent that Cole's objection served as an objection to the admissibility of the documents contained in Exhibit 2, the objection was untimely. Because Cole did not timely object to the admission of Exhibit 2 in whole or in part on hearsay grounds at trial and because the specific objection raised by Cole at trial pertained to Detective Toy's testimony, not the exhibit itself, we conclude that Cole has waived any potential appellate claim that the trial court erred by admitting any inadmissible hearsay contained in Exhibit 2 into the record at trial.

B. Sufficiency of the Evidence

Cole next contends that the evidence was insufficient to support his conviction of welfare fraud because the evidence supporting his conviction was inadmissible hearsay.

When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. We look to the evidence and the reasonable inferences therefrom that support the verdict. The conviction will be affirmed if evidence of probative value exists from which the fact finder could find the defendant guilty beyond a reasonable doubt.

Williams v. State, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007) (citations omitted). We will affirm unless “no rational fact finder” could have found the defendant guilty beyond reasonable doubt. *Id.*

Indiana Code section 35-43-5-7(a)(5) provides that in order to establish that a defendant committed welfare fraud, the State must prove that he knowing or intentionally concealed information for the purpose of receiving public relief or assistance to which he was not entitled. Ind. Code § 35-43-5-7(a)(5). Cole correctly asserts that in order to meet its burden here, the State was required to prove that he continued to reside at 2705 N. Parker Avenue after he was no longer entitled to receive public relief or assistance and that he knowingly or intentionally concealed this fact from the IHA. Cole claims that the trial court erred by relying on inadmissible hearsay to establish this material element of the alleged crime, and he further claims that the remaining admissible evidence was insufficient to support his conviction. We disagree.

Otherwise inadmissible hearsay evidence may be considered for substantive purposes and is sufficient to establish a material fact at issue when the hearsay evidence is admitted without a timely objection at trial. *Banks v. State*, 567 N.E.2d 1126, 1129 (Ind. 1991). Admittedly, the numerous police reports admitted as subparts of Exhibit 2 would have constituted inadmissible hearsay had Cole timely and properly objected to

them on that ground, but because he failed to do so, the reports became admissible evidence which the trial court could properly rely upon for substantive purposes. *See id.* Having concluded above that Cole did not object to the admission of the police reports as subparts of Exhibit 2, we now conclude that because Cole did not object to the admission of the evidence at trial, the police reports were admissible as substantive evidence on the issue of whether he continued to reside at 2705 N. Parker Avenue after he was no longer entitled to receive public relief or assistance. *See id.*

The evidence establishes that Cole was arrested numerous times between December 17, 2003 and March 30, 2006, and at the time of each arrest, the police reports established that his address was 2705 N. Parker Avenue. Some of Cole's arrests resulted in convictions for drug possession, carrying a handgun without a license, and criminal trespass. Cole did not notify the IHA of his convictions, which would have made him ineligible to live at 2705 N. Parker Avenue pursuant to HUD's "one strike" policy. Additionally, the State presented evidence that Cole continued to reside at 2705 N. Parker Avenue and that, as an adult member of the 2705 N. Parker Avenue residence, he received a benefit of well over \$2500.00, the threshold amount required to elevate Cole's actions to a C felony classification. *See Ind. Code § 35-43-5-7.* We therefore conclude that the evidence was sufficient to support Cole's conviction for welfare fraud and observe that Cole effectively invites us to reweigh the evidence on appeal, which we decline to do. Furthermore, having concluded that the evidence was sufficient to support Cole's conviction for welfare fraud, we need not consider Cole's claim that a retrial on

the sufficiency of the evidence would violate his constitutional rights protecting against double jeopardy.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.